

BEFORE THE MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PUBLIC HEARING ON
New Rule I, the amendment of ARM)	PROPOSED ADOPTION,
8.101.101, 8.101.201, 8.101.202,)	AMENDMENT, AND REPEAL
8.101.301, 8.101.302, 8.101.303,)	
8.101.304, 8.101.305, 8.101.306,)	
8.101.307, and 8.101.308, and the repeal)	
of 8.101.309 and 8.101.310 pertaining to)	
the administration of coal board grants)	

TO: All Concerned Persons

1. On May 10, 2006, at 1:30 p.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption of a new rule and the amendment and repeal of rules pertaining to the administration of coal board grants.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Community Development Division no later than 5:00 p.m. on April 26, 2006, to advise the division of the nature of the accommodation that you need. Please contact Joe LaForest, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2789; Montana Relay 1-800-253-4091; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to jlaforest@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I APPLICATIONS FOR PRELIMINARY ENGINEERING REPORTS OR PRELIMINARY ARCHITECTURAL REPORTS (1) The purpose of the applications for preliminary engineering reports or preliminary architectural reports is to evaluate applicants and establish priorities among those who may qualify for these grants. Applications will be evaluated on the five main guidelines listed in ARM 8.101.301.

(2) Coal impact grant funds may only be used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering report as described in the most current Uniform Application for Montana Public Facility Projects. Coal impact grant funds may only be used for the preparation of a preliminary architectural report as described in Appendix S of the CDBG Application Guidelines for Public Facilities Projects. Each booklet is available at <http://comdev.mt.gov>.

(3) Grants for preliminary engineering reports or preliminary architectural reports require the submission of only one application. The application shall be considered and either approved or denied by the coal board during the next scheduled quarterly meeting. The application is available online at http://comdev.mt.gov/CDD_CB.asp.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

4. The rules proposed to be amended provide as follows, deleted matter interlined, new matter underlined:

8.101.101 ORGANIZATION OF BOARD (1) The coal board is created by ~~section 2-15-1104~~ 2-15-1821, MCA, and appointed by the governor.

(2) remains the same.

(3) Information or submissions: Inquiries regarding the board may be addressed to the administrative officer or chairman at the Coal Board, Department of Commerce, ~~Cogswell Bldg., Room C-211,~~ 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523. Specific or general inquiries regarding the board may be addressed to the administrative officer.

~~(4) Personnel Roster. Addresses of the chairman and board members are as follows:~~

~~Mr. Monty E. Long, Chairman, 316 Harrison Blvd., Kalispell, MT 59901~~

~~Mr. Gene H. Kurtz, Vice Chairman, P.O. Box 830, Forsyth, MT 59327~~

~~Mr. Hal J. Stearns, 300 Westview, Missoula, MT 59803~~

~~Mr. Alan Evans, 4300 Highway 87 South, Roundup, MT 59072~~

~~Mr. Gerald Feda, 206 Second Ave. North, Glasgow, MT 59230~~

~~Mr. Ted Fletcher, Ashland, MT 59003~~

~~Mr. Robert E. Carroll, 130 Neill Avenue, Helena, MT 59601~~

~~(5) Chart of Division Organization. A chart of the Department organization is found at page 8-13 of these rules and incorporated by reference.~~

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.201 INCORPORATION OF MODEL RULES (1) The coal board has ~~herein adopted and incorporated the Attorney General's Model Procedural Rules 1 through 28 by reference and all subsequent amendments to the model procedural rules~~ adopts and incorporates by reference the Attorney General's Model Rules of Procedure. The model rules are found at ARM 1.3.101 through 1.3.233.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

8.101.202 INCORPORATION BY REFERENCE OF RULES FOR IMPLEMENTING MEPA (1) The board ~~hereby~~ adopts and incorporates by reference the department's rule for implementing Title 75, chapter 1, MCA, the

Montana Environmental Policy Act (MEPA) as set forth in ARM 8.2.302 through 8.2.401.

AUTH: 90-6-205, MCA

IMP: 75-1-201, 75-1-202, MCA

8.101.301 POLICY STATEMENT (1) The coal board must adopt rules governing its proceedings, prescribe forms for grant ~~and loan~~ applications, receive and consider applications for grants ~~and loans from the local impact and education trust fund~~, and award grants ~~and loans~~ to local governmental units, federally-recognized Indian tribes, school districts, and state agencies to assist local governmental units in meeting the local impact of coal development or decline by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development or decline.

(2) remains the same.

(a) Demonstration of nNeed:

(i) - What assistance is required to eliminate or reduce a direct and obvious threat to the public health, safety or welfare that has been caused as a direct result of coal development or decline.

(b) Severity of impact:

(i) - What has been the rapidity of growth or decline and subsequent ~~expansion~~ development of the problem and the number of people affected.

(c) Degree of local effort:

(i) - As applicable, Wwhat bonding, and millage efforts, or user charge has have been made in the past, those currently being made, and what effort has been made to secure funds from other sources to answer needs.

(d) Availability of funds:

(i) - ~~The weighing of the~~ What amount of funds is available in light of the total request submitted.

(e) Planning:

(i) - How does the application fit into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

8.101.302 PRE-APPLICATION FORM (LIF 1-75) (1) The purpose of the pre-application form is tTo evaluate applicants and establish priorities among those who may qualify for grants ~~or loans~~. Items to be considered are a description of the proposed project, estimated cost, projected completion date, and the project's relationship to coal development.

(2) It shall include a citation to the Montana Codes Annotated or, in the case of a federally-recognized Indian tribe, federal statute or regulation which authorizes the applicant to make expenditures to provide for the particular governmental service or facility. The pre-application Fform is available from administrative officer online at http://comdev.mt.gov/CDD_CB.asp.

~~(3) In addition to the above information an applicant for a loan shall establish that the method proposed for repayment of the loan is feasible.~~

~~(4) An application for a loan shall be accompanied by a written opinion from the applicant's legal counsel that the proposed loan arrangements will comply with all applicable statutes, including those relating to the form, limits, and procedures for incurring indebtedness.~~

(5) (3) If the applicant for a grant ~~or loan~~ is a federally-recognized Indian tribe, its application must include a resolution of the tribal council or other governing body waiving the applicant's jurisdictional immunity from suit on any issue specifically arising from the transaction of a grant ~~or loan~~ obtained under this part subchapter and agreeing to the adjudication of any dispute arising out of the grant ~~or loan~~ transaction in the district court of the first judicial district of the state of Montana. In addition, the applicant must submit proof that it has requested approval of the transaction, including the waiver of immunity, by the secretary of the United States Department of Interior or his designated agent and that the secretary or his designated agent has either approved the transaction or found that the secretary's approval is unnecessary.

AUTH: 90-6-205, MCA

IMP: 90-6-208, MCA

8.101.303 FULL APPLICATION FORM (LIF 2-75) (1) Requiring The purpose of the full application is to require such additional information as is needed by the board to fully consider eligible recipients of grants ~~and loans~~. Such additional information shall include local government budgets, documentation of past and current local effort, current comprehensive or ongoing development plan, documentation of citizen participation, and firm estimates or bids on the completed project. The full application Form is available from administrative officer online at http://comdev.mt.gov/CDD_CB.asp.

AUTH: 90-6-205, MCA

IMP: 90-6-208, MCA

8.101.304 AGREEMENT FORM (LIF 3-75) (1) The agreement form is t~~To~~ be executed between the coal board and local governmental unit establishing legal obligations and responsibilities upon each party to faithfully perform the terms of the grant ~~or loan~~ award. The f~~Form~~ is available from the administrative officer.

AUTH: 90-6-205, MCA

IMP: 90-6-208, MCA

8.101.305 SUBMITTAL DEADLINES (1) Grant pre-applications and full applications shall be submitted to the administrative officer 30 days prior to board considerations by the first of the month preceding the month of the next quarterly meeting.

(2) remains the same.

~~(3) All loan preapplications shall be submitted to the administrative officer by August 31 or March 1 of each year for board action during that fiscal year.~~

~~(4) (3) Exceptions to (1); and (2) and (3) shall be at the board's discretion.~~

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

8.101.306 STATE AGENCIES (1) An eligible state agency is one that:

(a) is seeking a grant to assist a local governmental unit in providing a service which the local government unit is legally responsible to provide in whole or in part; and such service must be expanded because of coal development or decline impact, and the applicant state agency is either joined in the application by the local governmental unit's governing body or has received letters of support from such authority; or

(b) remains the same.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

8.101.307 WATER AND/OR SEWER SYSTEMS PROVIDED BY DISTRICTS

(1) Improvement districts and county water and sewer districts are eligible for grants ~~and loans~~ to provide for the construction, reconstruction, expansion, and maintenance of a water and/or sewer system that serves:

(a) through (c) remain the same.

(2) Counties may apply for and receive grants ~~or loans~~ to pay for the expenses of rural improvement districts.

(3) Cities, towns, and consolidated units of local government may apply for and receive grants ~~or loans~~ to pay for the expenses of special improvement districts.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

8.101.308 FUNDING OF WATER AND/OR SEWER SYSTEMS TO BE PROVIDED BY DISTRICTS (1) remains the same.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

5. The board proposes to repeal the following rules:

8.101.309 LIMITATIONS ON LOANS found at ARM page 8-3684.

8.101.310 INTEREST RATES FOR LOANS found at ARM page 8-3684.

AUTH: 90-6-205, MCA

IMP: 90-6-205, 90-6-209, MCA

6. STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of administrative rules, the board is proposing a number of revisions to board rules. The board determined that it is reasonably necessary to amend the rules to, among other things, remove all reference to loans, institute a new one-step application for preliminary engineering reports and preliminary architectural reports, institute the modifications to the pre-application and full application forms, and to provide additional direction to applicants seeking coal impact grant funds. Many of the rules proposed for amendment have never been amended since their initial adoption in 1981. New Rule I is necessary so that the department may properly evaluate applicants and establish priorities for limited public funds. Accordingly, the board determined that there is reasonable necessity to adopt New Rule I to generally amend certain rules, and to repeal two rules related to loans from the board because the board does not make loans from available funds. Some of the proposed amendments are technical in nature, such as the proposed renumbering within rules to make them internally consistent. This statement of reasonable necessity applies to all the proposed rule actions.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, or by facsimile to (406) 841-2771 to be received no later than 5:00 p.m., May 17, 2006.

8. Joe LaForest has been designated to preside over and conduct this hearing.

9. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.commerce.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions relating to the CDBG program. Persons who wish to have their name added to this list may make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all coal board administrative rulemaking proceedings. The request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or by facsimile to (406) 841-2771, or by completing a request form at any rules hearing held by the agency.

11. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE
ANTHONY PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State March 27, 2006